

**WD81200**

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**IN THE  
MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**SHANNON J. EDWARDS,**

**Appellant,**

**v.**

**STATE OF MISSOURI,**

**Respondent.**

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Appeal from the Circuit Court of Jackson County, Missouri  
16th Judicial Circuit  
The Honorable Jack R. Grate, Judge  
Division 17

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**APPELLANT'S STATEMENT, BRIEF, AND ARGUMENT**

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### **JURISDICTIONAL STATEMENT**

Shannon J. Edwards appeals the denial, after an evidentiary hearing, of her Rule 24.035 motion for postconviction relief by the Honorable Jack R. Grate, Judge of Division 17 of the Circuit Court of Jackson County. The judgment sought to be vacated was for one count each of child molestation in the first degree, Section 566.067, RSMo Supp. 2011, and child abuse, Section 568.060, RSMo Supp. 2014. The court sentenced Ms. Edwards to concurrent sentences of ten years in prison for child molestation and seven years in prison for child abuse. On September 22, 2017, the court issued findings of fact and conclusions of law overruling the Rule 24.035 motion. Ms. Edwards timely filed notice of appeal on November 1, 2017.

This appeal does not involve any matters reserved for the exclusive jurisdiction of the Missouri Supreme Court. Jurisdiction over this cause lies with the Missouri Court of Appeals, Western District. Mo. Const., Article V, Section 3; Section 477.070, RSMo 2000.

### **STATEMENT OF FACTS**

The state charged Shannon J. Edwards in case number 1516-CR02873 with one count of statutory sodomy in the first degree, Section 566.062, RSMo Supp. 2011 (L.F. D14 p1; D15 p1). In case number 1616-CR01315, the state charged Ms. Edwards with one count of child abuse, Section 568.060, RSMo Supp. 2014 (L.F. D10 p1).

On June 24, 2016, Ms. Edwards appeared before the Honorable Jack R. Grate, Judge of Division 17, to enter a guilty plea (L.F. D18 p1). The state filed an information in lieu of indictment, reducing the charge of statutory sodomy to child molestation in the first degree, Section 566.067, RSMo Supp. 2011 (L.F. D16 p1; D13 p 1; D18 p1). Under the plea agreement, Ms. Edwards was to plead guilty to the charges in both cases, and would be sentenced to concurrent terms of ten years in prison for child molestation and seven years in prison for child abuse (L.F. D13 p2; D18 p2)

Under questioning by the court, Ms. Edwards indicated that she was forty-two years old, had a twelfth-grade education, and understood the plea agreement as set out by the lawyers (L.F. D13 p2; D18 p2). She was being treated for bipolar disorder, but her medication did not interfere with her ability to follow along with the proceedings (L.F. D13 p2; D18 p2). She told the court that she wanted to plead guilty in both cases (L.F. D13 p3, 4; D18 p3, 4)

The court reviewed the rights surrounding a trial and Ms. Edwards acknowledged that she was giving up those rights by pleading guilty (L.F. D13 p3;

D18 p3). Ms. Edwards told the court that no one had forced her or threatened her to plead guilty, and that no one had promised her anything outside the plea agreement (L.F. D13 p4; D18 p4). Ms. Edwards understood the range of punishment and made a factual basis for the two charges (L.F. D13 p4; D18 p4). She told the court that she had no complaints against her attorney and was satisfied with the services that had been provided to her (L.F. D13 p5; D18 p5).

The court accepted Ms. Edwards's guilty plea (L.F. D13 p5; D18 p5). The court sentenced Ms. Edwards to ten years in prison for child molestation and seven years in prison for child abuse (L.F. D12 p1-3; D13 p5; D17 p1-3; D18 p5).

Ms. Edwards was delivered to the Missouri Department of Corrections on June 29, 2016 (L.F. D6 p1-2). She filed a timely Rule 24.035 motion for post-conviction relief on August 22, 2016 (L.F. D1 p4; D2 p1-6). The hearing court appointed counsel (L.F. D1 p4; D3 p1). The complete guilty plea and sentencing transcripts were filed on January 27, 2017 (L.F. D1 p5, 13, 22; D5 p1). Appointed counsel timely filed an amended motion on April 27, 2017 (L.F. D1 p6; D6 p1-9).

In the amended motion, Ms. Edwards claimed that she received ineffective assistance of counsel and entered a guilty plea that was not knowing, voluntary, or intelligent, in that she was induced to plead guilty out of fear, after her attorney told her that if she took her case to trial and lost, she would be sentenced to fifteen to twenty-five years in prison (L.F. D6 p2-5).

An evidentiary hearing was held on August 11, 2017 (Tr. 2, 3). Evidence adduced at the hearing will be set forth in the Argument section of this brief. On

September 22, 2017, the hearing court issued findings of fact and conclusions of law overruling Ms. Edwards's motion (L.F. D7 p1-6). Ms. Edwards appeals (L.F. D1 p7; D9 p1).

**POINT RELIED ON**

**The hearing court clearly erred in overruling Appellant's Rule 24.035 motion, because Appellant has established that guilty plea counsel failed to act as a reasonably competent attorney, in violation of Appellant's rights to due process of law and to the effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 10 and 18(a) of the Missouri Constitution, when counsel caused Appellant to plead guilty unknowingly, involuntarily, and unintelligently, in that Appellant's plea was induced by fear, after her attorney informed her that, if she took her case to trial and lost, she would be sentenced to fifteen to twenty-five years in prison. Appellant was prejudiced because a reasonable probability exists that she would have taken her case to trial if she had not been put in fear of receiving a possible sentence of fifteen to twenty-five years in prison.**

*Boykin v. Alabama*, 89 S.Ct. 1709 (1969);

*Wilson v. State*, 26 S.W.3d 191 (Mo. App. W.D. 2000);

*Tillock v. State*, 711 S.W.2d 203 (Mo. App. S.D. 1986);

U.S. Const., Amends. VI and XIV;

Mo. Const., Art. I, Sections 10 and 18(a);

Section 491.075, RSMo 2000; and

Missouri Supreme Court Rules 24.02 and 24.035.

## ARGUMENT

**The hearing court clearly erred in overruling Appellant’s Rule 24.035 motion, because Appellant has established that guilty plea counsel failed to act as a reasonably competent attorney, in violation of Appellant’s rights to due process of law and to the effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 10 and 18(a) of the Missouri Constitution, when counsel caused Appellant to plead guilty unknowingly, involuntarily, and unintelligently, in that Appellant’s plea was induced by fear, after her attorney informed her that, if she took her case to trial and lost, she would be sentenced to fifteen to twenty-five years in prison. Appellant was prejudiced because a reasonable probability exists that she would have taken her case to trial if she had not been put in fear of receiving a possible sentence of fifteen to twenty-five years in prison.**

Review of the hearing court’s denial of a motion for post-conviction relief under Missouri Supreme Court Rule 24.035 is limited to a determination of whether the court’s findings of fact and conclusions of law are clearly erroneous. Rule 24.035(k); *Worthington v. State*, 166 S.W.3d 566, 572 (Mo. banc 2005). The court’s findings and conclusions are clearly erroneous “only if, after a full review of the record, [the court is] left with a definite and firm impression that a mistake has been made.” *Ziebol v. State*, 436 S.W. 3d 213, 216 (Mo. App. 2013).

The right to effective assistance of counsel is mandated by the Sixth Amendment to the United States Constitution and is a fundamental right guaranteed to state defendants by the Fourteenth Amendment. *Gideon v. Wainwright*, 83 S.Ct. 752 (1963). To have her conviction set aside, Ms. Edwards must show 1) that her plea counsel did not demonstrate the customary skill and diligence that a reasonably competent attorney would display when rendering similar services under the existing circumstances, and 2) that she was thereby prejudiced. *Strickland v. Washington*, 104 S.Ct. 2052 (1984); *Hill v. Lockhart*, 106 S.Ct. 366 (1985). When a conviction is the result of a guilty plea, any claim of ineffective assistance of counsel is immaterial except to the extent that it impinges on the voluntariness and knowledge with which the guilty plea was made. *Hagan v. State*, 836 S.W.2d 459, 463 (Mo. banc 1992).

A valid guilty plea must be made knowingly, voluntarily, and intelligently. *Boykin v. Alabama*, 89 S.Ct. 1709, 1711 (1969); *McMahon v. State*, 569 S.W.2d 753, 758 (Mo. banc 1978); Rule 24.02. Where the accused has been misled or induced to plead guilty by fraud, mistake, misapprehension, fear, coercion, or promises, the defendant should be permitted to withdraw her plea of guilty. *Tillock v. State*, 711 S.W.2d 203 (Mo. App. S.D. 1986); *Wilson v. State*, 26 S.W.3d 191, 195 (Mo. App. W.D. 2000).

Shannon J. Edwards has established that her guilty plea was not entered knowingly, intelligently, and voluntarily, in that she was induced to plead guilty out of fear, after her attorney informed her that, if she took her case to trial and

lost, she would be sentenced to fifteen to twenty-five years in prison (L.F. D6 p2-5). Ms. Edwards has established that she decided to plead guilty because she was afraid to go to trial and face a possible sentence of fifteen to twenty-five years in prison (L.F. D6 p2-5).

Ms. Edwards's attorney, Deidre Wood, testified at the evidentiary hearing that she prepared for trial and reviewed the discovery and depositions with Ms. Edwards (Tr. 5-6, 13, 15-16). After a hearing was held under Section 491.075, RSMo 2000, Ms. Edwards told Ms. Wood that she did not want to put the complaining witness, her son, through a trial (Tr. 6-7, 18, 21).

Ms. Wood testified that she had reviewed the range of punishment for the two charges with Ms. Edwards and told her that she would have to serve 85% of any sentence for statutory sodomy in the first degree (Tr. 7). Ms. Wood worked out two guilty plea options for Ms. Edwards (Tr. 9, 18-19). The first option was to plead guilty to child molestation and be sentenced to fifteen years in prison, and the state would dismiss the count of child abuse (Tr. 9, 18-19). The second option was to plead guilty to child molestation and child abuse, with concurrent sentences of ten years for child molestation and seven years in prison for child abuse (Tr. 9, 19). Ms. Edwards chose the second option (Tr. 9).

Ms. Wood testified that because the range of punishment for statutory sodomy in the first degree is a term of five years to life in prison, she did not tell Ms. Edwards that she could be sentenced to fifteen to thirty years in prison (Tr. 9-10, 22). Because statutory sodomy in the first degree is an "85% crime", Ms.

Wood did tell Ms. Edwards that if she were sentenced to thirty years in prison, she would have to serve about twenty-five years before being eligible for parole (Tr. 7, 10). Ms. Wood was not able to develop any impeachment evidence against state's witness Paul Burgess, the father of Ms. Edwards's son (Tr. 7-8, 11-12, 13).

Before Ms. Edwards pleaded guilty, no one told Ms. Wood anything about Mr. Burgess having an affair with a prostitute (Tr. 11, 17). Ms. Edwards was a first time offender, so Ms. Wood did not see a problem with calling Ms. Edwards to testify on her own behalf at trial (Tr. 11, 14).

Ms. Edwards testified at the evidentiary hearing that she had no felony convictions prior to the two counts to which she pleaded guilty (Tr. 27). Ms. Edwards testified that when she first met her attorney, Ms. Wood scared her by telling her that she was looking at fifteen to twenty-five years in prison (Tr. 28). Ms. Wood told Ms. Edwards that her case was serious and that she was actually facing up to thirty years or life in prison (Tr. 28-29). Ms. Edwards planned to go to trial and wanted to take the case to trial (Tr. 29, 31). A few days before trial was to start, Ms. Wood told her that she should plead guilty, because it was best for her defense (Tr. 29-30). Ms. Wood told Ms. Edwards that the prosecutor "wanted to hang" her and that she would probably lose at trial (Tr. 34-35). If she lost at trial, she would be sentenced to fifteen to twenty-five years (Tr. 34-35).

Ms. Edwards acknowledged that she was given two options for her guilty plea, and testified that Ms. Wood agreed with her that the option she chose was the best one for her (Tr. 30-31). Ms. Edwards testified that she was scared and was a

nervous wreck after Ms. Wood told her that she would get fifteen to twenty-five years, and that she was afraid to go to trial (Tr. 36). If Ms. Wood had not told her that she would get fifteen to twenty-five years after a trial, Ms. Edwards would not have pleaded guilty but would have taken her case to trial (Tr. 36).

Ms. Edwards testified that she pleaded guilty even though she still wanted to take the case to trial (Tr. 31-32). She said that she wanted to fight the charges because she was not guilty, and testified that she wanted to testify on her own behalf at trial (Tr. 31-32). She would have told the jury that she would not have committed the charged offenses against her son, that her son's father, Paul, had a girlfriend who was a prostitute, and that Paul and his girlfriend wanted to get Ms. Edwards out of the house, so they kept kicking her out of the house and getting restraining orders against her (Tr. 32-34). Ms. Edwards would have told the jury that her son and his father made up the charges, so that her son's father could get her out of the house (Tr. 32-34). Ms. Edwards testified that the only reason she pleaded guilty was because she feared being sentenced to fifteen to twenty-five years in prison if she were convicted after a trial (Tr. 36).

The hearing court clearly erred in denying relief on this claim (L.F. D7 p4-6). Ms. Edwards has established that Ms. Wood was constitutionally ineffective in representing Ms. Edwards, because she caused Ms. Edwards to plead guilty based on fear of going to trial and on fear of receiving a sentence of fifteen to twenty-five years in prison. Ms. Edwards testified that she is bipolar, and Ms. Wood had her evaluated by a mental health expert in an effort to develop mitigating evidence

(Tr. 8-9, 17, 27). Ms. Wood testified that she did advise Ms. Edwards of the range of punishment and that she would have told her that a thirty year sentence for statutory sodomy would require that she serve 85%, or a little over 25 years in prison (Tr. 7, 10, 28). Ms. Edwards was scared and was a nervous wreck after talking to Ms. Wood, and was afraid to go to trial (Tr. 36).

There was a basis for Ms. Edwards's belief that she would be sentenced to fifteen to twenty-five years in prison if convicted after a trial, *i.e.*, her mental health issues, combined with being a nervous wreck about trial, impacted her ability to make a knowing, voluntary, and intelligent decision about how to proceed. Ms. Edwards was denied her rights to due process of law, to a jury trial, and to the effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 10 and 18(a) of the Missouri Constitution, when she entered her guilty plea unknowingly, involuntarily, and unintelligently. Ms. Edwards therefore respectfully requests that this Court reverse the judgment of the hearing court and remand this cause for a new trial in the underlying criminal case.

### **CONCLUSION**

Based on the foregoing Argument, Shannon J. Edwards respectfully requests that this Court reverse the judgment of the hearing court and order a new trial in the underlying criminal case.

Respectfully submitted,

*/s/ Susan L. Hogan*

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**Certificate of Compliance and Service**

I, Susan L. Hogan, hereby certify as follows:

1. The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word, in Times New Roman size 13 point font. Excluding the cover page, the signature block, this certification, and the certificate of service, this brief contains 2,944 words. This brief does not exceed the 15,500 words allowed for an appellant's brief under this Court's Special Rule.

2. This brief has been scanned for viruses using a Symantec Endpoint Protection program, which the Public Defender System updated on June 19, 2018. According to that program, the electronically-filed copy provided to this Court and to the Attorney General is virus-free. This brief was completed and electronically filed on June 19, 2018.

3. A true and correct copy of the attached brief was sent through the e-filing system on June 19, 2018, to Shaun J. Mackelprang, Chief Counsel, Criminal Appeals Division, Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102, at [Shaun.Mackelprang@ago.mo.gov](mailto:Shaun.Mackelprang@ago.mo.gov).

*/s/ Susan L. Hogan*

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